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CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE COMPANY,

Defendant.

CASE NO. 2:21-cv-00073-MCE-JDP

**PLAINTIFF'S SUPPLEMENTAL
STATUS REPORT**

Zoom Conference

Hon. Jeremy D. Peterson

July 19, 2023, 2:00 p.m.

1 Plaintiff respectfully submits this Supplemental Status Report in response to the
2 Supplemental Status Report filed by Defendant yesterday, July 18, before the hearing scheduled
3 in this matter on July 19, 2023.

4 On June 22, 2023, this Court held a Status Conference hearing in this case. At that time
5 there was lengthy discussion about whether operations to remove cables from Lake Tahoe could
6 take place within 90 days after the final permit was issued, as was required by the Consent
7 Decree, (with a deadline of July 27, 2023), or if the removal should be delayed until September 6,
8 2023.

9 Defendant made the argument that for boating safety, removal operations should not begin
10 in the months of July and August, but that they would commence removal on September 6, 2023,
11 as long as State Parks had issued a permit allowing them to commence on that date.

12 As part of this conversation, the Court questioned whether mobilization could begin prior
13 to the commencement date so that the date would not slip. While Plaintiff felt that the boating
14 safety concerns could be addressed, based on representations to the Court from Defendant that the
15 work would begin on September 6, 2023, and that it would take approximately three weeks to
16 remove the cables, Plaintiff agreed to the September 6, 2023, date for the commencement of
17 removal.

18 As part of the hearing discussion, the Court ordered another Status Conference hearing on
19 July 19, 2023, and the filing of Status Reports by July 12, 2023.

20 On July 10, 2023, the parties held a zoom meet and confer. The morning of the zoom meet
21 and confer, Plaintiff sent Defendant photos of the Tahoe Keys Marina that were taken by
22 Plaintiff's counsel, Kirk Boyd, on July 5, 2023. (See Declaration of John Kirk Boyd in Support of
23 this Supplemental brief, Boyd Dec. para. 3).

1 During the zoom meet and confer on July 10, Mr. Boyd brought up the Tahoe Keys
2 photos and a discussion followed about how the work was scheduled to commence at Tahoe Keys
3 on September 6, 2023, provided that State Parks had issued an updated permit. (Boyd Dec. at
4 para. 4).

5
6 At no time was there any discussion that the parties were at an "impasse" as to the
7 removal date. (Boyd Dec. at para. 5). To the contrary, what was discussed, in accordance with the
8 Court's previous questions about mobilization prior to the commencement date, was what
9 mobilization plan was in place so that the removal operations would commence on September 6.
10 (Boyd Dec. at para. 6).

11 Assurances were given by Defendant that, provided State Parks issued a new permit,
12 mobilization plans were in place so that removal activities would commence on September 6,
13 2023. (Boyd Dec. at para. 7). The previous representations from the earlier hearing were
14 specifically confirmed during the meet and confer on July 10, and there was an agreement as to
15 the removal date, September 6, 2023. (Boyd Dec. at para. 8).

16
17 The Consent Decree is binding on both parties with the following condition: "In the event
18 that no resolution is reached regarding a new date by which the Cables will be removed, then this
19 Decree shall be null and void and vacated at the written election of either party..." (Consent
20 Decree, pg. 9, lns. 6-8).

21
22 The key language here is "In the event that no resolution is reached regarding a new date
23 by which the Cables will be removed,..." Here, based on the representations at the previous
24 hearing, and at the meet and confer just prior to the filing of the parties' Status Reports, *an*
25 *agreement was reached regarding the commencement date for the removal of the cables.*

26 Defendant cannot now unilaterally claim that there is no agreement as to the
27 commencement date because it does not like what has been written in a Wall Street Journal
28

1 article. Defendant seems to think it can now just ignore the agreed to commencement date and the
2 application of the Consent Decree. That is not how the rule of law works.

3 Defendant does not have the prerogative to represent to this Court that boating is a
4 problem, but don't worry, just allow an extension beyond the 90-day period provided for in the
5 Consent Decree, and removal will commence on September 6, and then, confirm this
6 representation at a meet and confer with Plaintiff a week before the hearing, only to, because of a
7 newspaper article, announce two days prior to hearing that there is no agreement and the
8 September 6, 2023 commencement date is off.

9
10 The September 6, 2023, commencement date for removal is not off, it remains. The
11 Defendant should live up to its representations on its own, but if it will not, then Plaintiff will
12 seek to enforce the Consent Decree and the commencement date of September 6, 2023.

13
14 It is now July 18. If Defendant wants to do additional testing between now and the
15 commencement date of September 6, it can do so. But the Consent Decree is not reliant on further
16 testing. The Defendant has already agreed that it will remove the cables. As was shown by
17 Plaintiff in an Exhibit to an earlier Status Report, in a confirmed bid for removal operations using
18 two barges presently on the water in Tahoe City, one with an excavator on it to pull up the cable,
19 the total cost for removal of the cables from Lake Tahoe is \$450,000 - 10 truckloads!

20
21 It is time for the commencement date of September 6, 2023, to be followed in accordance
22 with the Consent Decree, and for the removal job to be done.

23 Respectfully submitted,

LAW OFFICES OF ANDREW L. PACKARD

24
25 DATED: July 19, 2023

By: /s/ Andrew L. Packard
ANDREW L. PACKARD

26
27 Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
28 PROTECTION ALLIANCE